

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TYSJHON RAMONE MCCREARY,)	
Plaintiff,)	
)	C.A. No. 23-205 Erie
)	
v.)	
)	District Judge Susan Paradise Baxter
ERIE COUNTY PRISON, et al.,)	Chief Magistrate Judge Richard Lanzillo
Defendants.)	

MEMORANDUM ORDER

Plaintiff Tysjhon Ramone McCreary, an inmate incarcerated at the Erie County Prison in Erie, Pennsylvania, initiated this civil rights action by filing a *pro se* complaint, pursuant to 42 U.S.C. § 1983, against Defendants Erie County Prison (“ECP”), Warden Kevin Sutter (incorrectly identified as “Kevin Stutter”), and Deputy Warden Michael Holman (incorrectly identified as “Mikey Hallman”). This matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Plaintiff alleges claims of cruel and unusual punishment and denial of due process in violation of the eighth and fourteenth amendments to the United States Constitution, stemming from his ten-day confinement in an ECP cell as a pretrial detainee for nearly twenty-four hours a day.

On February 23, 2024, Defendants filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) [ECF No. 14]. Plaintiff was initially ordered to file a response to Defendants’ motion by March 25, 2024 [ECF No. 17], but failed to do so. Judge Lanzillo then

issued a show cause order directing Plaintiff to file a response by May 17, 2024 [ECF No. 19].

After Plaintiff once again failed to file a response, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") on May 23, 2024, without the benefit of an opposition brief. [ECF No. 20]. The R&R recommends that Defendants' motion to dismiss be granted, and that Plaintiff's claims against Defendant ECP and his Fourteenth Amendment due process claim be dismissed with prejudice; that Plaintiff's request for a sum certain and injunctive relief be stricken; and that Plaintiff's Fourteenth Amendment conditions of confinement claim be dismissed, without prejudice to Plaintiff's right to amend such claim. Objections to the R&R were due to be filed by June 10, 2024; however, no timely objections have been received.

Thus, after *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 14th day of June, 2024;

IT IS HEREBY ORDERED that Defendants' motion to dismiss [ECF No. 14] is GRANTED, as follows: (i) Plaintiff's claims against Defendant ECP and his Fourteenth Amendment due process claim are DISMISSED, with prejudice; (ii) Plaintiff's requests for a sum certain and for injunctive relief are stricken; and (iii) Plaintiff's Fourteenth Amendment conditions of confinement claim is DISMISSED, without prejudice to Plaintiff's right to amend such claim to correct the deficiencies noted in the R&R within fourteen (14) days of the date of this Order. In the event Plaintiff fails to file an appropriate amendment within such time, the Court's dismissal of Plaintiff's Fourteenth Amendment conditions of confinement claim will be converted to a dismissal with prejudice, and this case will be dismissed without further notice.

The report and recommendation of Chief Magistrate Judge Lanzillo, issued May 23, 2024 [ECF No. 20], is adopted as the opinion of the court.

The Clerk is directed to terminate Defendant Erie County Prison from this case.



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief United States Magistrate Judge